



**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA )  
 )  
**RICHARD A. STEINER,** )  
**Bar No. 001913** )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

No. 07-1813

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 9, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer’s Report filed December 17, 2009, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (“Tender”) and Joint Memorandum (“Joint Memorandum”) providing for a 60 day suspension, resignation upon reinstatement, and costs.

**Decision**

Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer’s findings of fact, conclusions of law, and recommendation for a 60 day suspension, resignation within 10 days of the date of the Order of Reinstatement, and costs of these

<sup>1</sup> Commissioner Belleau did not participate in this proceeding.



# **EXHIBIT**

**A**

**BEFORE A HEARING OFFICER OF  
THE SUPREME COURT OF ARIZONA**

**FILED**

DEC 17 2009

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *RM*

IN THE MATTER OF A MEMBER OF THE  
STATE BAR OF ARIZONA,

File No. 07-1813

**RICHARD A. STEINER,  
Bar No. 001913**

**HEARING OFFICER'S REPORT**

Respondent.

**PROCEDURAL HISTORY**

The State Bar filed the Complaint on July 7, 2009. The Hearing Officer was assigned on July 8, 2009. The Initial Case Management Conference was held on for July 27, 2009. The hearing was originally scheduled for October 20, 2009. The Hearing Officer granted Respondent's Emergency Motion to Continue Hearing because Respondent's health condition was worsening. Respondent's cardiologist opined that Respondent was not medically able to participate in the hearing due to a recent discovery of reduced blood flow to his heart. A new hearing date of November 16, 2009 was scheduled. On November 3, 2009 the parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent. The hearing on the Tender of Admissions was held on November 16, 2009. The parties are asking the Hearing Officer to recommend that the Commission accept their agreement that the Respondent will receive a suspension of 60 days. After Respondent is reinstated (within 10 days of the Order of Reinstatement) Respondent will resign from the State Bar of Arizona. If Respondent ever seeks to be reinstated he must follow the procedures set forth in Rules 32(c)(11)(C) and 64 (f)(1), Ariz. R. Sup. Ct.

## FINDINGS OF FACT<sup>1</sup>

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 17, 1966.
2. Respondent is also licensed to practice law in the state of Colorado having been admitted to practice in Colorado on May 23, 1978.
3. Respondent and his wife, Janet White-Steiner ("Ms. White-Steiner"), are partners in a two-partner law firm, Steiner & Steiner, P.C. ("the firm").
4. Respondent spends approximately one-third to one-half of his time in Arizona; the rest of the year is spent in Colorado. The time Respondent spends in Colorado has increased of late. Respondent intends to retire from the practice of law and, depending on health considerations, may spend most of his time in Colorado in the future. (TR 5:6 through 6:21)
5. Respondent was in Colorado most of April and May 2006.
6. The firm no longer has any full-time employees. The firm is now, in essence, a "two-person" shop, although Respondent has decreasing managerial responsibility.
7. During the relevant period, the firm employed one paralegal, Lisa Nicholson ("Ms. Nicholson") who was with the firm for twelve years; Ms. Nicholson is no longer a full-time employee of the firm.
8. Prior to joining the firm, Ms. Nicholson had no bookkeeping or accounting experience.
9. The responsibility for maintaining the firm's trust account records was transferred to Ms. Nicholson by Becky Hoeffner, a former employee of the firm.

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<sup>1</sup> The facts are found in the Tender of Admissions and in the Joint Memorandum and in the transcript of the hearing.

10. When Ms. Hoeffner left the firm approximately four years ago she provided Ms. Nicholson with a book of trust account ledgers and instructed Ms. Nicholson to log only disbursements in the book.

11. It was only after the occurrence of the Non-Sufficient Funds ("NSF") incident in May 2006 that Ms. Nicholson received training at the firm with regard to the trust account.

12. At all times, Ms. Nicholson reported only to Respondent with regard to the trust account, and if she had any questions regarding the trust account, Respondent was the only person she would go to with her questions.

13. As to supervision, Ms. White-Steiner only supervised Ms. Nicholson on the work that Ms. Nicholson did on Ms. White-Steiner's behalf.

14. On or about May 8, 2006, check # 1554, in the amount of \$432.36 attempted to pay against the firm's trust account at Compass Bank when the balance was \$424.09.

15. On or about May 8, 2006, Compass Bank paid check # 1554 and charged a \$36.00 overdraft fee, leaving the account with a negative balance of \$44.27.

16. The State Bar received an NSF notice from Compass Bank on May 15, 2005.

17. By letter dated May 18, 2006, Gloria Barr ("Ms. Barr"), the State Bar's Record Examiner, mailed Ms. White-Steiner a copy of the overdraft notice with the State Bar's initial screening letter, and requested that Ms. White-Steiner provide an explanation for the overdraft.

18. Respondent prepared a response letter dated June 23, 2006, which Ms. White-Steiner, his wife and law partner signed, and which bore her name. Respondent believed that there was nothing improper about his preparation of the response without express notice to the State Bar because the State Bar's screening investigation related to Ms. White-Steiner. If this matter were to go to hearing, Respondent would testify that at a subsequent meeting at the State Bar, Respondent

informed the Bar that he was preparing Ms. White-Steiner's responses to the State Bar's investigation. The State Bar would present opposing testimony. For purposes of this agreement, the State Bar does not contest Respondent's proposed testimony.

19. In her response, Ms. White-Steiner explained that: all client retainers and payments are placed in the firm's trust account; on May 8, 2006, Compass Bank received a total of \$8,478.72 that was to be deposited into the trust account; and that Ms. Nicholson made a disbursement in the amount of \$432.26 on May 8, 2006, before the deposit was credited to the account, resulting in a negative balance.

20. Notwithstanding Ms. White-Steiner's claim that the firm's paralegal made the disbursement that resulted in the NSF incident, Ms. White-Steiner filled out and signed check # 1554 on or about May 3, 2006. However, Ms. White-Steiner is not a party to this proceeding, having been the subject of a prior State Bar proceeding in *In the Matter of Janet L. White-Steiner*, 219 Ariz. 323, 198 P.3d 1195 (Ariz. 2009).

21. By letter dated June 28, 2006, Ms. Barr requested various items, including individual client ledgers and the Bank Fee/Administrative Funds ledger, or their equivalents that corresponded to the May 2006 trust account bank statements.

22. By letter dated July 19, 2006, Ms. White-Steiner provided a response to Ms. Barr's request and signed her name to the response. The response was prepared by Respondent and bore Ms. White-Steiner's name. Respondent believed that there was nothing improper about his preparation of the response without express notice to the State Bar, as indicated above.

23. Ms. White-Steiner included several copies of Checking/Savings Withdrawal slips written on the firm's credit card collection account with her response.

24. The firm's credit card collection account had existed at the time, at a minimum, for twelve years.

25. At the time of the State Bar's investigation of Ms. White-Steiner, client funds in the credit card collection account were transferred to the trust account by check. As part of Ms. White-Steiner's probation the State Bar's Law Office Management Assistance Program ("LOMAP") is monitoring the firm's trust account procedures. In addition, the firm has virtually no trust account activity and anticipates having no trust account activity at all in the near future.

26. Ms. White-Steiner contended that she did not transfer funds from the credit card collection account.

27. Notwithstanding Ms. White-Steiner's contention that she did not transfer funds from the credit card collection account, all of the Checking/Savings Withdrawal slips submitted were filled out and signed by Ms. White-Steiner for deposit into the firm's trust account. This fact was previously adjudicated in the *White-Steiner* case.

28. Ms. White-Steiner also included copies of several deposit tickets, which evidenced deposits into the firm's trust account; Ms. White-Steiner wrote out the deposit tickets between March 23, 2006 and May 30, 2006. This fact was previously adjudicated in the *White-Steiner* case.

29. Ms. White-Steiner contended she did not typically fill out the checks for disbursements from the trust account. However, Ms. White-Steiner included several copies of checks that she wrote on the firm's trust account on behalf of various clients during the month of May 2006. This fact was previously adjudicated in the *White-Steiner* case.

30. Fifteen client ledgers were provided with Ms. White-Steiner's July 19, 2006 response, all of which lacked complete transaction dates, and running balances; some of the fifteen



ledgers contained negative balances that were not reflected on the ledgers. This fact was previously adjudicated in the *White-Steiner* case.

31. No Bank Fee/Administrative Funds ledger was provided to Ms. Barr with Ms. White-Steiner's July 19, 2006 response. Notwithstanding the submission of the client ledgers with her July 19, 2006 response, Ms. White-Steiner did not know when they were prepared or who prepared them; she never reviewed them and did not know where the information reflected in the ledgers was obtained. This fact was previously adjudicated in the *White-Steiner* case.

32. Respondent testified in the *White-Steiner* case that he did not know when the ledgers referenced above were prepared or who prepared them.

33. The ledgers submitted with Ms. White-Steiner's July 19, 2006 response were not in compliance with the Ethical Rules, as concluded by the Hearing Officer in the Janet White-Steiner hearing. This finding was not overturned by the Disciplinary Commission or the Supreme Court.

34. By letter dated July 28, 2006, Ms. Barr requested additional information from Ms. White-Steiner, including: copies of individual client ledgers for twenty-five specific clients and any other clients who had or should have had funds in the trust account in May 2006; a copy of the May 2006 reconciliation; the amount of personal funds held on deposit in the firm's trust account to cover miscellaneous bank fees and charges with a copy of the corresponding ledger; and an explanation for the negative balances that appeared on certain client ledgers.

35. By letter dated August 26, 2006, Ms. White-Steiner responded to Ms. Barr's request and included two signatures: her own and Respondent's, both of which were written by Ms. White-Steiner. This fact was previously adjudicated in the *White-Steiner* case.

36. Ms. White-Steiner provided fifty-three client ledgers with the response, the majority of which contained incomplete dates of transactions; several contained negative balances; and some, incorrect running balances. This fact was previously adjudicated in the *White-Steiner* case.

37. As found by the Hearing Officer in the *White-Steiner* hearing, which finding was not overturned by the Disciplinary Commission or the Supreme Court, the ledgers provided with Ms. White-Steiner's August 26, 2006 response were not maintained in accordance with the minimum standards set forth in Rule 43, Ariz.R.Sup.Ct. The negative balances indicated conversion of client funds.

38. One client ledger, that of Client Castellano, contained twenty-seven negative balances dating back to 2003. This fact was previously adjudicated in the *White-Steiner* case.

39. A comparison of the ledgers submitted with Ms. White-Steiner's responses dated July 19, 2006, and August 26, 2006, indicated that the ledgers did not reflect accurate transactions. This fact was previously adjudicated in the *White-Steiner* case.

40. Ms. Barr requested additional documentation to investigate the negative balances further. Respondent would testify that the firm made every effort to comply in a full and accurate fashion with each and every one of the State Bar's many requests for additional information, but not all information was provided to Ms. Barr. For purposes of this agreement, the State Bar does not contest this assertion.

41. The only financial data provided by Ms. White-Steiner concerning funds in client accounts were the client ledgers previously described.

42. In response to Ms. Barr's request for the May 2006 reconciliation, Ms. White-Steiner provided a "reconciliation", which was not a proper monthly three-way reconciliation, indicated

bank balances, but did not consider a general ledger balance or individual client ledger balances. This fact was previously adjudicated in the *White-Steiner* case.

43. Proper monthly three-way reconciliations were not being conducted.

44. The firm did not maintain a ledger for miscellaneous bank fees and charges on the firm's trust account, and the firm kept, at most, \$10.00 in the account to keep it open.

45. By letter dated September 14, 2006, Ms. Barr requested an explanation of the amounts in the "Deficit" column on the monthly reconciliation Ms. White-Steiner had previously submitted with her August 26, 2006 response. This fact was previously adjudicated in the *White-Steiner* case.

46. By letter dated September 29, 2006, Respondent provided a response to Ms. Barr's September 14, 2006 letter on behalf of Ms. White-Steiner and explained that the firm deposits all client funds into their trust account.

47. Respondent further explained that the firm maintains four separate accounts, including a collection account at Compass Bank for credit card receipts only.

48. The collection account was not a trust account, but an office account in which client funds and the firm's earned funds were held together.

49. In his letter, Respondent reported that the credit card payments are collected for the firm by a third party agent and later deposited into the collection account at Compass Bank.

50. Respondent further reported that the third party agent withholds collection fees for services provided, and that the withholding of these fees resulted in a shortfall being deposited into the firm's trust account.

51. In the *White-Steiner* case, Respondent admitted that the firm failed to account for the withholding of the collection fees, and in so doing, erroneously credited each client the entire amount charged.

52. Respondent discovered that between January and May 2006, as a result of the collection fees being deducted, the firm received \$2,462.64 less than the amount credited to their clients.

53. Insufficient funds existed in the Trust Account and by virtue of the failure to account for the credit card fees. Respondent contends this was an inadvertent error and the allegation that the firm commingled client funds and failed to properly account for the bank fees was generally adjudicated in Ms. White-Steiner's case.

54. An explanation of the amounts in the "Deficit" column on the reconciliation sheet, which totaled \$124,864.01, previously requested by Ms. Barr, was not submitted with Respondent's September 29, 2006 response. This fact was previously adjudicated in the *White-Steiner* case.

55. An explanation of \$18,330.26 in client funds missing from the trust account on May 4, 2006, according to the ledgers provided, was not provided. This fact was previously adjudicated in the *White-Steiner* case.

56. By letter dated December 13, 2006, Ms. Barr requested, in part, a copy of the firm's complete trust account bank statements for the period of January 1, 2003 through April 28, 2006, and copies of individual client ledgers and the Bank Fee/Administrative Funds ledger, or their equivalents, that corresponded to the referenced trust account bank statements.

57. By letter dated December 20, 2006, Ms. White-Steiner provided a response to Ms. Barr's letter and signed her name to the response. Respondent, however, prepared the response. For

purposes of this agreement, the State Bar does not contest Respondent's assertion that his purpose was not to mislead the State Bar.

58. In her response, Ms. White-Steiner explained that some of the information requested by Ms. Barr was not readily available and Ms. White-Steiner said that it was her understanding that Ms. Barr was considering a meeting at which Ms. Nicholson and a "Partner" could explain the operation of the firm's trust account.

59. A meeting between Respondent, Ms. Nicholson, Ms. Barr and Bar Counsel Patricia Ramirez ("Ms. Ramirez"), occurred on January 5, 2007.

60. At the meeting, the State Bar has alleged that Respondent did not inform Ms. Barr or Ms. Ramirez that he was the party responsible for the firm's trust account or that the complaint filed by the State Bar should have been directed at him; nor did he ask Ms. Barr or Ms. Ramirez why he was not included in the complaint that was filed against Ms. White-Steiner. Respondent has denied that he did not tell the State Bar about his involvement, and for purposes of this agreement, the State Bar does not dispute Respondent's contention.

61. The negative balances on the client ledgers were also discussed at the meeting; both Respondent and Ms. Nicholson told Ms. Barr and Ms. Ramirez that the brackets indicated conversion of client funds.

62. This error in accounting and the failure to debit fees in the collection account was discovered only after Mr. Steiner and Ms. Nicholson met with the State Bar on January 5, 2007.

63. At the meeting, Ms. Nicholson learned the difference between the two types of funds being placed in the trust account.

64. On or about February 13, 2007, Ms. White-Steiner provided copies of the firm's trust account bank statements for the period 2003 through 2005 to Ms. Barr.

65. The bank statements evidenced that NSF charges were assessed on three separate checks in September 2005.

66. The bank never notified the State Bar about these NSF incidents.

67. On January 26, 2007, the State Bar filed its formal Complaint against Ms. White-Steiner.

68. On February 16, 2007, Ms. White-Steiner filed her Response to the State Bar's formal Complaint (the "Answer") in which she admitted all but three of the State Bar's allegations.

69. Unbeknownst to the State Bar until the time of the disciplinary hearing, held on June 1, 2007, all of Ms. White-Steiner's responses to Ms. Barr were drafted by Respondent, who also assembled all of the documents that were submitted with the responses.

70. Upon receiving the initial screening letter, Ms. Nicholson gave the letter to Ms. White-Steiner, who returned it to Ms. Nicholson with instructions to discuss it with Respondent and to take care of it.

71. Thereafter, Respondent and Ms. Nicholson assumed full responsibility for meeting the requests for information from the State Bar.

72. If this matter were to go to hearing, Ms. Barr would testify that she did not know she was receiving responses from Respondent; Ms. Barr believed she was corresponding with Ms. White-Steiner. Respondent would testify that he told the State Bar he was the responsible party and assumed it knew he was the one responding. For purpose of this agreement, the State Bar does not dispute Respondent's contention.

73. At all times relevant to this matter, Respondent was the person solely in charge of all things related to the firm trust account, including but not limited to: the procedures to be followed

with regard to the trust account, the training of staff who maintained the trust account records, and the supervision of staff who maintained the trust account records. (TR 14:10)

74. Respondent never put in place measures to ensure that Ms. Nicholson's and/or Ms. White-Steiner's conduct conformed to Rules of Professional Conduct with regard to the firm's trust account. (TR 14:17-23)

75. On May 8, 2006, the date of the NSF incident, only \$424.09 was held in the Trust Account.

76. Check # 1554, which attempted to pay against the firm's trust account on May 8, 2006, contained a notation regarding "Lavanway."

77. At the time the check was written, the firm had only one client named Lavanway.

78. Notwithstanding the fact that Ms. White-Steiner made a disbursement from the trust account on behalf of Client Lavanway, Ms. White-Steiner knew nothing about the status of Client Lavanway's funds in the firm's trust account or the processes and procedures the firm undertook to assure there were funds in a client's account when a check was written on behalf of a client.

79. Notwithstanding the fact that Ms. White-Steiner made a disbursement on behalf of Client Lavanway from the trust account, Ms. White-Steiner relied on Respondent and Ms. Nicholson to know the status of Client Lavanway's funds in the firm's trust account.

80. According to Client Lavanway's ledger, as of May 3, 2006, she had insufficient funds in the trust account when check # 1554 was written on her behalf.

81. Additionally, none of the funds deposited in the trust account on May 8, 2006, belonged to Client Lavanway.

82. Ms. Nicholson prepared the ledger submitted to the State Bar for Client Lavanway.

83. Ms. Nicholson reconstructed Client Lavanway's ledger, as well as all of the other client ledgers submitted with Ms. White-Steiner's responses to the State Bar.

84. According to Ms. Nicholson, brackets around the balances on the Lavanway ledger indicated a negative amount.

85. Ms. Nicholson, however, could not confirm Client Lavanway's balance in the firm's trust account on May 3, 2006, by reviewing her client ledger; the only way to ascertain the amount of funds she had deposited was to review the billing file. All the facts related to Client Lavanway were adjudicated in the *White-Steiner* case.

86. Because all of the ledgers submitted to the State Bar were reconstructed from information contained in the billing files, Ms. Nicholson could not confirm the reliability of the ledgers submitted to the State Bar.

87. The reconstructed ledgers submitted to the State Bar were the only documents provided by Respondent and Ms. White-Steiner with regard to deposits and disbursements for clients, notwithstanding Ms. Barr's request for client ledgers or their equivalents.

88. At the time of the State Bar's investigation, the firm used Time Slips to determine if a client had funds in the trust account.

89. According to Respondent, Ms. White-Steiner was in charge of handling the time slips and billing.

90. Ms. White-Steiner did not worry about client funds in the trust account, as that responsibility belonged to Respondent. Respondent, however, never took it upon himself to verify clients' balances in the firm's trust account by checking the firm's time slips. (TR 15:8-18)

91. Respondent participated in the State Bar's Law Office Management Assistance Program ("LOMAP"), beginning in 1999 for trust account violations.



92. Respondent signed the Memorandum of Understanding (“MOU”) on April 1, 1999.

Respondent was required to comply with the following MOU terms:

- a. Member shall personally assure that his trust account is maintained in compliance with Rules 43 and 44, Ariz.R.S.Ct., including the Trust Account Guidelines.
- b. At a minimum, Member must do the following:
  1. Member shall maintain a separate ledger (or the equivalent) for each client or third person for whom he holds funds or property in the trust account, and a separate ledger for any administrative funds he keeps in the trust account.
  2. Member shall reconcile his trust account on at least a monthly basis.
  3. Client, third party and administrative fund ledgers shall be reconciled with the trust account check register, which in turn shall be reconciled with the bank statement.
  4. Member shall personally assure before issuing trust account checks that the specific funds against which checks are written are available for withdrawal (i.e., Member shall verify that checks deposited into his trust account have been paid by the payor's financial institution before issuing any checks against those funds).
  5. Member shall maintain accurate and current balances in his trust account check register and client ledgers.
  6. Member shall review documentation regarding his trust account on a regular basis to ensure compliance with the applicable rules.

7. If member utilizes support staff in maintaining his trust account, he shall provide adequate training and ongoing supervision to assure that such staff members competently perform their assigned responsibilities. Member shall also assure that internal controls exist as necessary to assure proper safekeeping of client funds and/or property.

c. Member shall provide ongoing supervision of both legal and non-legal staff necessary to assure that work assigned to them is done completely, timely, and accurately.

93. Respondent also signed a disclaimer that states in part, "Participant expressly acknowledges that the scope of advice or information given by LOMAP personnel is limited to law office management and that Participant is solely responsible for determining whether his or her law office practices comply with the Rules of Professional Conduct."

94. Respondent confirmed in his quarterly reports to the State Bar that he was maintaining separate ledgers for each client, that he reconciled the trust account on at least a monthly basis, that he checked to make sure that funds were available before issuing a trust account check, that he maintained accurate and current balances in the trust account register and that he reviewed documentation regarding the trust account on a monthly basis to ensure compliance with the rules.

95. Respondent successfully completed the terms of his diversion on April 16, 2002, which included knowing his ethical responsibilities relating to his trust account and his supervision duties with regard to his partner and his staff. (TR 36:6)

### **CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW**

Respondent conditionally admits that his conduct, as set forth above, violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.15, 5.1 and 5.3, and Rules 43 and 44, Ariz. R. Sup. Ct. Respondent conditionally admits that he engaged in professional misconduct that violated duties owed to clients and violated other duties owed as a professional by: failing to make reasonable efforts to assure that Steiner & Steiner P.C., (“the firm”), had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct with respect to the firm’s trust account management; by failing to make reasonable efforts to maintain internal policies and procedures designed to provide reasonable assurance that the firm conformed to the rules pertaining to trust account management, specifically those rules that protect and account for client funds; and, failing to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that a non-lawyer assistant’s conduct was compatible with professional obligations. In addition, Respondent conditionally admits that he failed to maintain the firm’s client trust account in accordance with the Trust Account Rules and Guidelines, Rules 43 and 44, Ariz. R. Sup. Ct. Respondent admits that his conduct as described herein, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.15, 5.1 and 5.3, and Rules 43 and 44, Ariz. R. Sup. Ct. (TR 25:22 through 26:3)

Based on the above facts and conditional admissions the Hearing Officer concludes that the Bar has established Respondent’s violations of the above-referenced Rules and ERs by clear and convincing evidence.

### **CONDITIONAL DISMISSALS**

For purposes of this agreement, the State Bar conditionally dismisses the alleged violations of Rule 42, Ariz. R. Sup. Ct.:

ER 8.1(b) and Rule 53(f), Ariz. R. Sup. Ct.

## RESTITUTION

The Bar has not sought restitution in this matter because it cannot be established that an individual client was harmed by the trust account violations. (TR 26:4-18)

## ABA STANDARDS

In determining the appropriate sanction, consideration was given to the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and Arizona case law.

The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. The court and commission consider the *Standards* a suitable guideline. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990). *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the court and the commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

### **Duty Violated**

Respondent has admitted to violating his duty to his clients and to the legal system in failing to assure that the firm conformed to the rules with respect to trust account management and failing to ensure that internal policies and procedures were in place to correctly manage these accounts. (TR 25:22 through 26:3) He also admitted violating his duty owed to clients and to the legal system by failing to ensure that a non-lawyer assistant who worked with the trust accounts

conducted herself in accordance with the rules. Respondent further violated his duty to clients by his own failure to maintain the firm's trust account in accordance with the Trust Account Rules and Guidelines.

### **Mental State**

Respondent should have known that his firm was dealing improperly with client property by his lack of management of the trust account and that this failure could cause potential injury to a client. Respondent should have known from his previous experience with LOMAP (in Diversion) from 1999 to 2002 about his obligations to actively manage the firm's trust account. (TR 14:25 through 15:7) During April and May 2006, Respondent knew that he was not appropriately supervising the management of the trust account. Respondent knew that he owed a duty as a professional to either actively manage the trust account himself or correctly instruct a member of his staff (Ms. Nicholson) in how to manage the account. The parties have agreed that for the April, May 2006 time period Respondent's conduct was knowingly done. Respondent knew that there was a lack of training and supervision on how to manage the firm's trust account. (TR 26:18-24)

### **Injury**

The Bar has not offered proof of actual injury to any specific client of Respondent or of his law firm. However, the potential for injury is serious when the trust account is overdrawn. (TR 26:4-14)

Given the conduct in this matter, the most applicable *Standards* are 4.1 and 7.0 regarding failure to preserve client property. *Standard* 4.12 provides: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." *Standard* 7.2 provides: "Suspension is generally

appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.” The parties agreed in the hearing that Respondent’s conduct was knowingly done, because he knew he was not providing the appropriate training and supervision for the period of April and May 2006. However in mitigating factor 9.32(b) below the parties refer to Respondent’s lack of a selfish motive because he negligently believed that his trust account procedures were appropriate and he negligently misunderstood how to deal with merchant fees for handling credit cards. The Hearing Officer does not see these positions as inconsistent. Respondent knew that he was absent from the firm in April and May 2006 and that he had not appropriately trained Ms. Nicholson to manage the trust account. Respondent’s own thoughts on the correct procedures for managing the account were erroneous due to his own negligence. The parties are indicating that Respondent was not trying to convert client funds, but was mistaken (through his own negligence and his knowing lack of supervision of non-lawyer staff) about the correct procedures for managing the trust account.

In deciding what sanction to recommend the following aggravating and mitigating circumstances have been considered:

**Aggravating Factors:**

*ABA Standard 9.22*

(a) Prior disciplinary offenses:

Informal Reprimand, file no. 00-2495, 10/19/2001: ERs, 1.15 and 1.16, Rule 42, and Rules 43 and 44, Ariz.R.Sup.Ct. Respondent failed to hold client funds in his trust account in violation of ER 1.15 and Supreme Court Rules 43 and 44. Respondent’s fee agreement was ambiguous and did not clearly reflect the nature of the funds and where

the funds would be deposited. Respondent also violated ER 1.16(d) when he failed to promptly return the unearned fees to his client once the representation ended.

Probation, file no. 97-2073, 6/17/1998: ERs 1.3, 1.4 and 8.1(b), Rule 42, Ariz.R.Sup.Ct., and Rules 51(h) and (i), Ariz.R.Sup.Ct.

Respondent also participated in diversions in file numbers 98-0206, 99-0500, and 99-1977, involving some trust account related violations. Said diversions shall not be considered in aggravation as prior disciplinary offenses, but is only offered to show that Respondent has previously had training through the LOMAP program.

(c) Pattern of misconduct. Respondent has been sanctioned before for trust account violations. Respondent contends that his prior sanctions establish a proper basis for one aggravating circumstance *only* and should not be considered a second time under Standard 9.22(c). The Hearing Officer disagrees with Respondent's assertion that his prior sanction for trust account violations may only be used for one aggravating factor. However, the Hearing Officer still thinks that the stipulated sanction in this case is appropriate in spite of the three aggravating factors.

(i) Substantial experience in the practice of law. Respondent was admitted to practice in September 17, 1966 and has been in charge of the firm trust account for many years.

**Mitigating Factors:**

*ABA Standard 9.32*

(b) Absence of a dishonest or selfish motive. Respondent's conduct was caused by his negligent belief that his trust account management procedures were in accordance with

applicable law, and his negligent misunderstanding about how merchant fees are handled for credit cards. (TR 36:6 through 37:18)

- (e) Full and free disclosure to a disciplinary board or cooperative attitude toward proceedings. Respondent testified truthfully in the *White-Steiner* proceeding knowing that his testimony could be detrimental to his personal interests. He has fully cooperated with the present proceeding.

In evaluating the aggravating and mitigating factors, the Hearing Officer agrees with the parties that they do not justify varying from the presumptive sanction of suspension.

#### PROPORTIONALITY ANALYSIS

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (quoting *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

*In re Hudspeth* SB-09-0090-D (09/23/09) – Respondent commingled personal funds with client funds, did not maintain the required records, failed to perform a monthly three-way reconciliation, failed to properly supervise employees who worked on the trust account, which resulted in theft of client funds, and failed to have adequate internal controls. Respondent violated ER 1.15 and Rules 43 and 44. In aggravation: 9.22(d) (multiple offenses) and (i)(substantial experience in the practice of law). In mitigation: 9.32(a) (absence of prior discipline), (b)(absence of dishonest or selfish motive), (d)(good faith effort to rectify



consequences of misconduct), (e)(cooperated with State Bar), and (l)(remorse). Mr. Hudspeth's mental state was knowing and there was the potential for injury. Mr. Hudspeth was suspended for 30 days and placed on probation for one year. At first glance, the major difference between Mr. Hudspeth and Respondent is that Mr. Hudspeth had no prior discipline. However, the Commission diminished the weight of that mitigating factor because Mr. Hudspeth had a prior informal history in State Bar case #06-1031. In the section "Lawyer's Mental State" there was a finding that Mr. Hudspeth's conduct was knowing because he had recently attended the State Bar's Trust Accounts Ethics Enhancement Program (TAEEP) on May 1, 2007. His trust account violations covered a period from July 1, 2007 to February 29, 2008.

*In re Gonzales* SB-08-0177-D (02/11/09) – Respondent failed to adhere to the requirements of the trust account rules and guidelines. Respondent failed to adequately maintain trust account records, co-mingled client property with the lawyer's own property, and failed to safeguard client property. Respondent violated ER 1.15(a) and Rules 43 and 44. In aggravation: 9.22(c) (pattern of misconduct) and (i)(substantial experience in the practice of law). In mitigation: 9.32(a) (absence of prior discipline), (b)(absence of dishonest or selfish motive), and (d)(good faith effort to rectify consequences of misconduct). His mental state was knowing or should have known and there was the potential for injury. Mr. Gonzales was suspended for 30 days and placed on probation for one year. Although Mr. Gonzales did not have a record of prior discipline the parties agreed not to give this mitigating factor great weight because Mr. Gonzales had been ordered into the State Bar's Diversion program in file number 06-0492 for trust account violations and as a condition of the diversion he completed TAEEP on February 6, 2007. The Hearing Officer found that in spite of his instruction at TAEEP Mr. Gonzales failed to notice the continuing credit processing error. Beginning in October, 2006 and continuing until August, 2007

Mr. Gonzales accepted credit card payments. Those credit card payments erroneously went directly to Mr. Gonzales' firm's operating account.

In *In re Ryan* SB-06-0004-D (2006) Mr. Ryan was suspended for 60 days and placed on probation for two years for trust account violations. He dealt improperly with client funds, commingled personal funds with client funds and disbursed funds from the trust account knowing there were insufficient funds in the account. He applied a client's advance payment for an appeal to the client's unpaid bill without the client's consent. He admitted knowingly violating the Rules. The aggravating factors were prior disciplinary offenses, pattern of misconduct and substantial experience in the practice of law. The mitigating factors were timely good faith effort to make restitution or rectify the consequences of the misconduct, full and free disclosure and cooperative attitude, character or reputation, and remorse. Mr. Ryan had previously in File Number 00-1073 been ordered into diversion for trust account violations (overdraft) and he attended TAEPP. After his successful completion of TAEPP the Bar received another report of an overdraft on his trust account. In File Number 02-1358 Mr. Ryan was again found to have violated ER 1.15 and Rules 43 and 44. He received an Informal Reprimand.

In *Hudspeth and Gonzales* each attorney had no record of prior discipline, unlike Respondent in the instant case. However, a closer examination of those cases reveals that both attorneys had prior contact with the Bar over trust account violations and both committed their newest trust account violations after they had specific training in the proper procedures for trust account management. In *Ryan* the attorney had both diversion for trust account violations and discipline for another trust account infraction before the third trust account violation for which he received the 60 day suspension and two years probation. These cases demonstrate that the sanction in Respondent's case is proportionate to other similar (but not identical) cases.

## RECOMMENDATION

Based on the *Standards* and case law, the Hearing Officer agrees with the parties that a sixty-day suspension is within the range of appropriate sanctions in this case. After Respondent is reinstated, he will retire from the practice of law. This sanction will serve the purposes of lawyer discipline, which is to protect the public, instill confidence in the public, deter other lawyers from similar misconduct, and maintain the integrity of the Bar. Respondent's resignation pursuant to Rule 32(c)(11)(C)(iii) means that if Respondent ever again seeks reinstatement he must prove that he possesses the character and fitness to resume practicing law in this jurisdiction. Rule 64(f) will also govern his application for reinstatement. This rule will require Respondent to prove the cure of the grounds upon which the suspension order was entered. (TR 36:6 through 37:18) Therefore, Respondent will have to establish that he is capable of appropriately managing a trust account in accordance with all the rules of professional conduct. The sanction stipulated to by the parties protects the public. It operates somewhat similar to a suspension of six months and one day. The public is protected because Respondent must establish both his character and fitness to practice law and that he has cured the problem of trust account management. (TR 34:9 through 35:19) The trust account in question is under LOMAP supervision in the *White-Steiner* case. (TR 38:18 through 39:7)

Although Respondent has previously been involved in trust account violations he successfully completed the terms of his diversion in April 2002. About four years passed before the current charges. In 2006, Respondent was trying to continue involvement with his Arizona practice while living part time in Colorado. (TR 33:5) Respondent appeared at the hearing in this matter with a tank of oxygen and tubes running to his nose to assist him with breathing. (TR 37:19-22) He testified that he was 74 years old in 2006. (TR 33:5) He is now about 77 years old

and in poor health. The agreement reached by the parties is (according to counsel) perhaps the first of its kind. (TR 20:12; 22:19 through 23:3) The reinstatement application, if any, would be heard according to Rule 64 under the same procedures as for members who have been summarily suspended. This means the application would be heard by the State Bar Board of Governors, not by the Supreme Court's Committee on Character and Fitness and then the Supreme Court. (TR 19:24 through 20:17) However, the Rule protects the public because the burden is on Respondent to establish the grounds to be reinstated. The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary Commission and the Supreme Court to determine the appropriate sanction, the Hearing Officer agrees with the State Bar and Respondent and asserts that the objectives of discipline will be met by the imposition of the proposed sanction set forth below.

### SANCTIONS

The Hearing Officer agrees with the parties and recommends that the following disciplinary sanctions shall be imposed:

1. Respondent shall receive a sixty (60) day suspension;
2. After Respondent is reinstated, within ten (10) days of the Supreme Court's Order of Reinstatement, Respondent will resign from the State Bar of Arizona pursuant to Rule 32(c)(11), Ariz. R. Sup. Ct. To effectuate this term, Respondent has filled out the Board of Governors approved Resignation Affidavit, a copy of which is attached to the Tender as Exhibit A. The State Bar will submit the Resignation Affidavit to the Board of Governors once Respondent has been reinstated. In the event that Respondent later wants to be

reinstated, he must follow the procedures set forth in Rules 32(c)(11)(C) and 64(f)(1), Ariz. R. Sup. Ct.

3. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter. An itemized Statement of Costs and Expenses is attached as Exhibit B and incorporated herein.

Dated 17<sup>th</sup> day of December, 2009

Hon. Jonathan Schwartz / JHS  
Jonathan H. Schwartz  
Hearing Officer 6S

Original filed with the Disciplinary Clerk  
this 17<sup>th</sup> day of December, 2009.

Copy of the foregoing mailed  
this 17 day of December, 2009, to:

J. Scott Rhodes  
Respondent's Counsel  
Jennings Strouss & Salmon PLC  
201 E Washington Street, 11th Floor  
Phoenix, AZ 85004

Shauna Miller  
Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: Deann Baker

# EXHIBIT A

BEFORE THE SUPREME COURT  
OF THE  
STATE OF ARIZONA

IN THE MATTER OF

RICHARD A. STEINER )  
 )  
A MEMBER OF THE ) RESIGNATION  
STATE BAR OF ARIZONA )

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

I, RICHARD A. STEINER, a member of the State Bar of Arizona,

Arizona Bar Number 001913, residing

at 8100 East Camelback Road, Camelback #97, Scottsdale, AZ 85251,

pursuant to Rule 32(c)11, Ariz.R.S.Ct., tender my resignation as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court and from the roster of the State Bar of Arizona.

I avow that there are no disciplinary proceedings pending against me. I acknowledge that if this resignation is accepted, it shall not be a bar to the institution of subsequent disciplinary proceedings for any conduct on my part occurring prior to my resignation. I understand that upon approval of this resignation my status will be that of a "resigned in good standing". However, in the event that subsequent disciplinary proceedings result in my disbarment, suspension or censure, I understand that my status will be changed from "resigned in good standing" to that of a person so disciplined.

DATED this 3rd day of November, 2009

Richard A. Steiner  
Member's Signature

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of  
November, 2009

Mary Terese Liska  
NOTARY PUBLIC

My Commission expires: October 7, 2011



# EXHIBIT B



1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,  
3 Richard A. Steiner, Bar No. 001913, Respondent

4 File No(s). 07-1813

5 Administrative Expenses

6 The Board of Governors of the State Bar of Arizona with the consent of the  
7 Supreme Court of Arizona approved a schedule of general administrative  
8 expenses to be assessed in disciplinary proceedings. The administrative  
9 expenses were determined to be a reasonable amount for those expenses  
10 incurred by the State Bar of Arizona in the processing of a disciplinary matter.  
11 \* An additional fee of 20% of the general administrative expenses will be  
12 assessed for each separate file/complainant that exceeds five, where a violation  
13 is admitted or proven.

14 General administrative expenses include, but are not limited to, the following  
15 types of expenses incurred or payable by the State Bar of Arizona:  
16 administrative time expended by staff bar counsel, paralegals, legal assistants,  
17 secretaries, typists, file clerks and messengers; postage charges, telephone  
18 costs, normal office supplies, and other expenses normally attributed to office  
19 overhead. General administrative expenses do not include such things as travel  
20 expenses of State Bar employees, investigator's time, deposition or hearing  
21 transcripts, or supplies or items purchased specifically for a particular case.

22 *General Administrative Expenses for above-numbered proceedings* = \$1200.00

23 Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary  
24 matter, and not included in administrative expenses, are itemized below.

25 Staff Investigator/Miscellaneous Charges

09/22/09 Computer investigation \$26.25

Total for staff investigator charges \$26.25

**TOTAL COSTS AND EXPENSES INCURRED** **\$1,226.25**

24 Sandra E. Montoya  
25 Sandra E. Montoya  
Lawyer Regulation Records Manager

11-4-09  
Date